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8/26/98

Docket Clerk  
U.S. DOT Docket  
Room PL-40 1  
400 Seventh Street, S. W.  
Washington, D.C. 20590-0001

Ref: FHWA Docket No. FHWA-98-3414 — 7

The Federal Highway Administration (FHWA) is seeking public comment on the future scope and effect of the North American Out-of Service Criteria (OOS criteria) which are not part of the Federal Motor Carrier Safety Regulations (FMCSRs)

The OOS criteria is a reference guide developed by The Commercial Vehicle Safety Alliance (CVSA) to assist enforcement personnel in determining if a commercial motor vehicle or driver found in violation of law should continue in commerce. This criteria was established in the 1980s to promote reciprocity and uniformity in the roadside inspection process. The criteria focused on those items that most often contributed to commercial vehicle crashes. They were developed within a committee structure created by CVSA that was made up of enforcement personnel, the motor carrier industry and equipment manufacturers. CVSA has continued to refine the OOS criteria in a pro-active manner to address changes in CMVs and driver regulations.

In 1988 and 1989 the Maine State Police became aware of a trend within the judicial system to dismiss citations for a lack of a specific reference in the FMCSRs to the OOS criteria. Many of the items contained in the OOS criteria use FMCSR Part 396.3(a)(1) as the specific reference for the violation, yet there is no direct mention of the OOS criteria in Part 396.3(a)(1) or any other Part of the FMCSRs.

I support the adoption of the OOS criteria by reference by FHWA into the FMCSRs. This would permit the OOS criteria to remain a "living" document with the ability to adapt to future changes in equipment, defects that may occur or develop in current and future CMVs and changes to the current FMCSRs without the need to evoke the rulemaking process. Adoption by reference would also permit the enforcement community to have a specific reference within the FMCSRs to support the position.

I believe the current procedure used to develop the criteria is the fairest system that has been developed. It permits all interested parties to have a voice in the development and implementation of the OOS criteria. This system has been in place for almost two decades and continues to work well. I believe it would be a mistake to change that which has been a success.

Sincerely,  
